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of which the candidate was a senior officer at or within 2 years before the time of such filing;

(2) The candidate was convicted in a criminal proceeding or is a named party in a pending criminal proceeding (excluding traffic violations and other misdemeanors);

(3) The candidate was the subject of any order, judgment, or decree, not subsequently reversed, suspended, or vacated, by any court of competent jurisdiction, permanently or temporarily enjoining or otherwise limiting the candidate from engaging in any type of business practice.

Subpart G—Annual Report of Condition of the Federal Agricultural Mortgage Corporation

SOURCE: 58 FR 48791, Sept. 20, 1993, unless otherwise noted. Redesignated at 62 FR 15093, Mar. 31, 1997.

§ 620.40 Content, timing, and distribution of Federal Agricultural Mortgage Corporation's annual report of condition.

(a) The Federal Agricultural Mortgage Corporation shall prepare and publish an annual report of its condition that is equivalent in content to the annual report to shareholders required by section 14 of the Securities and Exchange Act of 1934.

(b) The Corporation shall distribute the annual report of condition to its shareholders within 120 days of its fiscal year-end.

(c) Upon receiving a request for an annual report of condition, the Corporation shall promptly mail or otherwise furnish to the requestor a copy of the most recent annual report described in this section.

(d) The Corporation shall file three copies of the annual report of condition with the Farm Credit Administration's Office of Secondary Market Oversight within 120 days of its fiscal year-end.

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PART 621—ACCOUNTING AND REPORTING REQUIREMENTS

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AUTHORITY: Secs. 5.17, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2279aa–11).

SOURCE: 58 FR 48786, Sept. 20, 1993, unless otherwise noted.

Subpart A—Purpose and Definitions

§ 621.1 Purpose and applicability.

This part sets forth accounting and reporting requirements to be followed by all banks, associations, and service organizations chartered under the Act;

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the Federal Farm Credit Banks Funding Corporation; and, where specifically indicated, the Federal Agricultural Mortgage Corporation. The requirements set forth in this part are of both general and specific applicability. Certain requirements focus on areas of financial condition and operating performance that are of special importance for generating, presenting, and disclosing accurate and reliable information.

§ 621.2 Definitions.

For the purposes of this part, the following definitions shall apply:

(a) *Accrual basis of accounting* means the accounting method in which expenses are recorded when incurred, whether paid or unpaid, and income is reported when earned, whether received or not received.

(b) *Borrowing entity* means the individual(s), partnership, joint venture, trust, corporation, or other business entity, or any combination thereof, that is primarily obligated on the loan instrument.

(c) *Generally accepted accounting principles* means that body of conventions, rules, and procedures necessary to define accepted accounting practices at a particular time, as promulgated by the Financial Accounting Standards Board (FASB) and other authoritative sources recognized as setting standards for the accounting profession in the United States. Generally accepted accounting principles include not only broad guidelines of general application but also detailed practices and procedures that constitute standards by which financial presentations are evaluated.

(d) *Generally accepted auditing standards* means the standards and guidelines adopted by the Auditing Standards Board of the American Institute of Certified Public Accountants (AICPA) to govern the overall quality of audit performance.

(e) *Institution* means any bank, association, or service organization chartered under the Act; the Federal Farm Credit Banks Funding Corporation, and where specifically noted, the Federal Agricultural Mortgage Corporation.

(f) *Loan* means any extension of credit or lease that is recorded as an asset

of a reporting institution, whether made directly or purchased from another lender. The term “loan” includes, but is not limited to:

(1) Loans originated through direct negotiations between the reporting institution and a borrower;

(2) Purchased loans or interests in loans, including participation interests, retained subordinated participation interests in loans sold, and interests in pools of subordinated participation interests that are held in lieu of retaining a subordinated participation interest in loans sold;

(3) Contracts of sale; notes receivable; and

(4) Other similar obligations and lease financing.

(g) *Material* means the magnitude of an omission or misstatement of accounting information that, in light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would have been changed or influenced by the omission or misstatement.

(h) *Net realizable value* means the net amount the lender would expect to be realized from the acquisition and subsequent sale or disposition of a loan's underlying collateral. Generally, net realizable value is equal to the estimated selling price in the ordinary course of business, less estimated costs of acquisition, completion, and disposal.

(i) *Qualified public accountant* means a person who:

(1) Holds a valid and unrevoked certificate, issued to such person by a legally constituted State authority, identifying such person as a certified public accountant;

(2) Is licensed to practice as a public accountant by an appropriate regulatory authority of a State or other political subdivision of the United States;

(3) Is in good standing as a certified and licensed public accountant under the laws of the State or other political subdivision of the United States in which is located the home office or corporate office of the institution that is to be audited;

(4) Is not suspended or otherwise barred from practice as an accountant

or public accountant before the Securities and Exchange Commission (SEC) or any other appropriate Federal or State regulatory authority; and

(5) Is independent of the institution that is to be audited. For the purposes of this definition the term “independent” shall have the same meaning as under the rules and interpretations of the AICPA.

(j) *Recorded investment* means the face amount of the loan increased or decreased by applicable accrued interest and unamortized premium, discount, finance charges, or acquisition costs, and may also reflect a previous direct write-down of the investment.

Subpart B—General Rules

§ 621.3 Application of generally accepted accounting principles.

Each institution shall:

(a) Prepare and maintain, on an accrual basis, accurate and complete records of its business transactions as necessary to prepare financial statements and reports, including reports to the Farm Credit Administration, in accordance with generally accepted accounting principles, except as otherwise directed by statutory and regulatory requirements;

(b) Prepare its financial statements and reports, including reports to the shareholders, investors, boards of directors, institution management and the Farm Credit Administration, in accordance with generally accepted accounting principles, except as otherwise directed by statutory and regulatory requirements; and

(c) Prepare and maintain its books and records in such a manner as to facilitate reconciliation with financial statements and reports prepared from them.

§ 621.4 Audit by qualified public accountant.

(a) Each institution shall, at least annually, have its financial statements audited by a qualified public accountant in accordance with generally accepted auditing standards.

(b) The qualified public accountant’s opinion of each institution’s financial statements shall be included as a part of each annual report to shareholders.

(c) If an institution disagrees with the opinion of a qualified public accountant required by paragraph (b) of this section, the following actions shall be taken immediately:

(1) The institution shall prepare a brief but thorough written description of the scope and content of the disagreement, noting each point of disagreement and citing, in all cases, the specific provisions of generally accepted accounting principles and generally accepted auditing standards upon which the institution’s position in the disagreement is based;

(2) A copy of the institution’s final description of the disagreement shall be given to the accountant who provided the opinion with which the institution disagrees;

(3) The accountant shall have 10 business days to develop and provide a brief but thorough final response to the institution’s description of the disagreement, including all items believed to be incorrect or incomplete, and citing, in all cases, the specific provisions of generally accepted accounting principles and generally accepted auditing standards upon which the accountant’s position in the disagreement is based;

(4) Both the institution’s final description of the disagreement and the accountant’s final response to it shall be included in the institution’s annual report to shareholders directly following the accountant’s opinion of the institution’s financial statements; and

(5) The institution shall immediately notify the Chief Examiner, Farm Credit Administration, of any disagreement with its accountant and shall furnish the Farm Credit Administration with the written documentation required by paragraphs (c) (1) through (4) of this section.

(d) If an institution selects a qualified public accountant to audit its financial statements and provide an opinion thereon for its annual report who is different from the accountant whose opinion appeared in the institution’s most recent annual report, the following items shall be sent to the Farm Credit Administration no later than 15 days after the end of the month in which the change took place and shall be included in the institution’s annual meeting information statement

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and annual report to shareholders for the year in which the change of accountants took place:

(1) The name and address of the accountant whose opinion appeared in the institution's most recent annual report to shareholders;

(2) A brief but thorough statement of the reasons the accountant selected for the most recent annual report was not selected for the current annual report. If the change resulted from a disagreement with the accountant, the statement shall describe the institution's disagreement with the accountant's opinion and the accountant's final response to the institution's disagreement prepared pursuant to paragraph (c) of this section; and

(3) The identification of the highest ranking officer, committee of officers, or board of directors, as appropriate, that recommended, approved, or otherwise made the decision to change qualified public accountants.

§ 621.5 Accounting for the allowance for loan losses and chargeoffs.

Each institution shall:

(a) Maintain at all times an allowance for loan losses that is adequate to absorb all probable and estimable losses that may reasonably be expected to exist in the loan portfolio.

(b) Develop, adopt, and consistently apply policies and procedures governing the establishment and maintenance of the allowance for loan losses which, at a minimum, conform to the rules, definitions, and standards set forth in this part and any other applicable requirements.

(c) Charge-off loans, wholly or partially, as appropriate, at the time they are determined to be uncollectible.

(d) Ensure that when an institution or the Farm Credit Administration determines that the value of a loan or other asset recorded on its books and records exceeds the amount that can reasonably be expected to be collectible, or when the documentation supporting the recorded asset value is inadequate, the institution shall immediately charge off the asset in the amount determined to be uncollectible. If the amount determined to be uncollectible by the institution is different from the amount determined to

be uncollectible by the Farm Credit Administration, the institution shall charge off such amount as the Farm Credit Administration shall direct.

Subpart C—Loan Performance and Valuation Assessment

§ 621.6 Performance categories and other property owned.

Each institution shall employ the following practices with respect to categorizing high-risk loans and loan-related assets. No loan shall be put into more than one performance category. At a minimum, loans meeting the criteria for both nonaccrual and another performance category shall be classified as nonaccrual.

(a) *Nonaccrual loans.* A loan shall be considered nonaccrual if it meets any of the following conditions:

(1) Collection of any amount of outstanding principal and all past and future interest accruals, considered over the full term of the asset, is not expected;

(2) Any portion of the loan has been charged off, except in cases where the prior chargeoff was taken as part of a formal restructuring of the loan; or

(3) The loan is 90 days past due and is not both adequately secured and in process of collection.

(i) A loan is considered adequately secured only if:

(A) It is secured by real or personal property having a net realizable value sufficient to discharge the debt in full; or

(B) It is guaranteed by a financially responsible party in an amount sufficient to discharge the debt in full.

(ii) A loan is considered in process of collection only if collection efforts are proceeding in due course and, based on a probable and specific event, are expected to result in the prompt repayment of the debt or its restoration to current status. There must be documented evidence that collection in full of amounts due and unpaid is expected to occur within a reasonable time period, not to exceed 180 days from the date that payment was due. The commencement of collection efforts

through legal action, including bankruptcy or foreclosure, or through collection efforts not involving legal action, including ongoing workouts and reamortizations, do not, in and of themselves, provide sufficient cause to keep a loan out of nonaccrual status. If full collection of the debt or its restoration to current status is dependent upon completion of any action by the borrower, the institution must obtain the borrower's written agreement to complete all such actions by the specific dates set forth in agreement.

(b) *Formally restructured loans.* A loan is considered formally restructured if it meets the “troubled debt restructuring” definition set forth in Statement of Financial Accounting Standards No. 15, Accounting by Debtors and Creditors for Troubled Debt Restructurings, as promulgated by the FASB.

(c) *Loans 90 days past due still accruing interest.* (1) Loans 90 days past due still accruing interest means loans that are 90 days or more contractually past due, and that are both adequately secured and in process of collection, as described in this section.

(2) A loan shall be considered contractually past due when any principal repayment or interest payment required by the loan instrument is not received on or before the due date. A loan shall remain contractually past due until it is formally restructured or until the entire amount past due, including principal, accrued interest, and penalty interest incurred as the result of past due status, is collected or otherwise discharged in full.

(d) *Other property owned* means any real or personal property, other than an interest-earning asset, that has been acquired as a result of full or partial liquidation of a loan, through foreclosure, deed in lieu of foreclosure, or other means.

§ 621.7 Rule of aggregation.

(a) When one loan to a borrower is placed in nonaccrual, an institution must immediately evaluate whether its other loans to that borrower, or related borrowers, should also be placed in nonaccrual. All loans on which a borrowing entity, or a component of a bor-

rowing entity, is primarily obligated to the reporting institution shall be considered as one loan unless a review of all pertinent facts supports a reasonable determination that a particular loan constitutes an independent credit risk and such determination is adequately documented in the loan file.

(1) A loan shall be considered an independent credit risk if a substantial portion of the loan is guaranteed as to principal and interest by a government agency.

(2) Other loans shall be considered independent credit risks if and so long as:

(i) The primary sources of repayment are independent for each loan;

(ii) The loans are not cross-collateralized; and

(iii) The principal obligors are different person(s) and/or entity(ies). Related loans will not be considered independent credit risks if the operations of a related borrower are so financially interdependent with the borrower's operations that the economic survival of one will materially affect the economic survival of the other, determined in accordance with § 614.4359(a)(2) of this chapter.

(b) If the evaluation required by paragraph (a) of this section results in a determination that the borrower's other loans with the institution do not represent an independent credit risk, and full collection of such loans is not expected, then all of the borrower's loans must be aggregated and classified as nonaccrual. If such other loans represent an independent credit risk and are fully collectible, then they may remain in their current performance category.

(c) When an institution becomes aware that a borrower has a loan that has been classified nonaccrual by any other lender, the institution must re-evaluate the credit risk in its loan to the borrower and then determine whether an independent credit risk exists.

[58 FR 48786, Sept. 20, 1993, as amended at 64 FR 34519, June 28, 1999]

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§ 621.8 Application of payments and income recognition on nonaccrual loans.

Each institution shall employ the following practices with respect to application of cash payments on non-accrual loans:

(a) If the ultimate collectibility of the recorded investment, in whole or in part, is in doubt, any payment received on such loan shall be applied to reduce the recorded investment to the extent necessary to eliminate such doubt.

(b) Once the ultimate collectibility of the recorded investment is no longer in doubt, payments received in cash on such loan may qualify for recognition as interest income if all of the following characteristics are met at the time the payment is received:

(1) The loan does not have a remaining unrecovered prior chargeoff associated with it, except in cases where the prior chargeoff was taken as part of a formal restructuring of the loan;

(2) The payment received has come from a source of repayment detailed in the plan of collection;

(3) The loan, after considering the payment, is not contractually past due more than 90 days and is not expected to become 90 days past due, or a repayment pattern has been established that reasonably demonstrates future repayment capacity.

(c) The institution shall employ the following practices with respect to earned but uncollected interest income on loans, leases, contracts, and similar assets that are determined not to be fully collectible:

(1) Earned but uncollected interest income that was accrued in the current fiscal year and is determined to be uncollectible shall be reversed from interest income; and

(2) Earned but uncollected interest income that was accrued in prior fiscal years and is determined to be uncollectible shall be charged off against the allowance for loan losses.

§ 621.9 Reinstatement to accrual status.

A loan may be reinstated to accrual status, when each of the following criteria are met:

(a) All contractual principal and interest due on the loan is paid and the loan is current;

(b) Prior chargeoffs are recovered, except for troubled debt restructures;

(c) No reasonable doubt remains regarding the willingness and ability of the borrower to perform in accordance with the contractual terms of the loan agreement; and

(d) Reinstatement is supported by a period of sustained performance in accordance with the contractual terms of the note and/or loan agreement. Sustained performance will generally be demonstrated by 6 consecutive monthly payments, 4 consecutive quarterly payments, 3 consecutive semi-annual payments, or 2 consecutive annual payments.

§ 621.10 Monitoring of performance categories and other property owned.

(a) Each institution shall:

(1) Account for, report, and disclose to shareholders, investors, boards of directors, and the Farm Credit Administration all material items with respect to performance categories and other property owned in accordance with the rules and definitions set forth in this part and any other applicable requirements;

(2) In accordance with § 620.5(g)(1)(iv)(A) of this chapter, disclose to shareholders, investors, boards of directors, and the Farm Credit Administration the nature and extent of significant potential credit risks within the loan portfolio, or other information that could adversely impact performance of the loan portfolio in the near future;

(3) Develop, adopt, and consistently apply policies and procedures governing performance categories and other property owned, which, at a minimum, conform to the definitions, rules, and standards set forth in this part and such other requirements and procedures as may be required by the Farm Credit Administration;

(4) Review the loan portfolio at least quarterly to ensure that all high-risk loans have been assigned the appropriate performance category; and

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(5) Review all high-risk loans in the loan portfolio at least quarterly to determine the collectibility of accrued but uncollected income, if any.

(b) Measures taken to enhance the collectibility of a loan shall not be deemed to relieve an institution of the requirement to monitor and evaluate the loan for the purpose of determining its performance status.

Subpart D—Report of Condition and Performance

§ 621.12 Applicability and general instructions.

(a) Each institution, including the Federal Agricultural Mortgage Corporation, shall prepare and file such reports of condition and performance as may be required by the Farm Credit Administration.

(b) Reports of condition and performance shall be filed four times each year, and at such other times as the Farm Credit Administration may require. The reports shall be prepared on the accrual basis of accounting and shall fairly represent the financial condition and performance of each institution at the end of, and over the period of, each calendar quarter, provided that such additional reports as may be necessary to ensure timely, complete, and accurate monitoring and evaluation of the affairs, condition, and performance of Farm Credit institutions may be required, as determined by the Chief Examiner, Farm Credit Administration.

(c) All reports of condition and performance shall be filed with the Farm Credit Administration, Office of Examination, 1501 Farm Credit Drive, McLean, Virginia, 22102-5090.

§ 621.13 Content and standards—general rules.

Each institution, including the Federal Agricultural Mortgage Corporation, shall prepare reports of condition and performance:

(a) In accordance with all applicable laws, regulations, standards, and such instructions and specifications and on such media as may be prescribed by the Farm Credit Administration;

(b) In accordance with generally accepted accounting principles and such

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other accounting requirements, standards, and procedures as may be prescribed by the Farm Credit Administration; and

(c) In such manner as to facilitate their reconciliation with the books and records of reporting institutions.

§ 621.14 Certification of correctness.

Each report of financial condition and performance filed with the Farm Credit Administration shall be certified as having been prepared in accordance with all applicable regulations and instructions and to be a true and accurate representation of the financial condition and performance of the institution to which it applies. The reports shall be certified by the officer of the reporting institution named for that purpose by action of the reporting institution's board of directors. If the board of directors of the institution has not acted to name an officer to certify the correctness of its reports of condition and performance, then the reports shall be certified by the president or chief executive officer of the reporting institution.

Subpart E—Reports Relating to Securities Activities of the Federal Agricultural Mortgage Corporation

§ 621.20 Form and content.

(a) The Federal Agricultural Mortgage Corporation (Corporation) shall provide the Office of Secondary Market Oversight with three copies of any filings made with the SEC pursuant to the Securities Act of 1933 or the Securities and Exchange Act of 1934. Such copies shall be filed with the FCA no later than 1 business day after any SEC filing.

(b) The Corporation shall make the following filings with the Office of Secondary Market Oversight for securities either issued or guaranteed by the Corporation that are not registered under the Securities Act of 1933.

(1) Three copies of any offering circular, private placement memorandum, or information statement prepared in connection with the securities offering

shall be filed with the Office of Secondary Market Oversight at or before the time of the securities offering.

(2) For securities backed by qualified loans as defined in section 8.0(9)(A) of the Act, the Corporation shall file one copy of the following within 1 business day of the finalization of the transaction:

(i) The private placement memorandum for securities sold to investors; and

(ii) The pooling and servicing agreement when the security is purchased by the Corporation as authorized by section 8.6(g) of the Act.

(3) For securities backed by qualified loans as defined in section 8.0(9)(B) of the Act, the Corporation shall provide summary information on such securities issued during each calendar quarter in the form prescribed by the Office of Secondary Market Oversight. Such summary information shall be provided with each report of condition and performance filed pursuant to §621.12, and at such other times as the Office of Secondary Market Oversight may require.

(c) The Corporation shall file with the Office of Secondary Market Oversight copies of all substantive correspondence between the Corporation and the Securities and Exchange Commission and the Department of the Treasury relating to securities activities or regulatory compliance. Such correspondence should be filed no later than the date of filing of the report of condition and performance for the calendar quarter in which the correspondence was received or sent.

(d) The Corporation shall promptly notify the Office of Secondary Market Oversight if it becomes exempt or claims exemption from the filing requirements of the Securities and Exchange Act of 1934.

[58 FR 48786, Sept. 20, 1993]

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